

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9870 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SANDEEP PRASHAT VAIDYA

Versus

PRINCIPAL

Appearance:

HL PATEL ADVOCATES for Petitioner
MR KAMLESH B MEHTA for Respondent No. 1
MR AD OZA for Respondent No. 2

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 10/05/2000

ORAL JUDGEMENT

This is for recording reasons, pursuant to the final order recorded, on 4.5.2000 in this petition, on account of the urgency followed by passage of time and upon joint request.

The petitioner has been a student in the respondent No.1 School, A-One School, Ahmedabad, which is hereinafter, referred to as 'the School'. Respondent No.2 is the Gujarat Higher Secondary Education Board (Board for short).The petitioner has, inter alia, contended that his academic career has remained brilliant, as he used to get distinction in all the examinations including the examination of Xth standard conducted by the Board, in which he got 80 per cent marks, and that is one of the reasons why he opted for Science Stream and he is pursuing his study and education in XIIth standard with industry, hard work and sincerity.

The petitioner completed his first term of XII standard with presence of more than 80 per cent. Even in the mid-term examination held in course of first term, he secured very good marks. He also paid fees for second term and fees for computer education. He had also filled up for draft form for Board examination and has also paid fees of Rs.280/- for final examination along with form. The final examination was due in March 2000. The respondent No.1 School under a misapprehension and misconception, branded the petitioner as a thief in respect of certain parts of computers from the respondent No.1 School, which the petitioner has denied.

The Principal of the School entertained an impression that the petitioner is responsible for the theft committed of parts and components of computer in the School. The petitioner is, therefore, wrongly, involved and connected with the theft for which he is not at all responsible, as contended by him in the petition. It is, therefore, his case that he is a victim of one theft case which is registered with the Ghatlodia Police Station for the offence punishable under section 379 and 511 of the Indian Penal Code. The petitioner's version is that theft was committed because of the pressure of some anti-social and gang operating in Theltej area who took advantage of the innocence of the petitioner. The petitioner after arrest came to be enlarged on bail by the competent Court and, therefore, he was on bail even when the petition was filed.

After Diwali vacation, the petitioner went to the School with his father. However, respondent No.1, Principal of the School, requested the father of the petitioner not to send the petitioner to school with a view to avoid disintegration of image of his son. The father of the petitioner, therefore, inquired about the presence and filling of the form for the Board Examination and the

respondent No.1 had assured that he would have no problem for his presence and his son, i.e. the petitioner, would be permitted to appear in the final Higher Secondary Board Examination.

Thereafter, the petitioner along with his father went to the School and had filled up the final examination form. The respondent No.1, Principal of the School did not allow the petitioner to fill up the form, he advanced false reasons and excuses and asked the petitioner that he could not be permitted to appear in the Board examination. Respondent No.1, Principal of the School also, indicated that the petitioner could not even attend the school as it would tarnish the image of the School since the petitioner was, allegedly, involved in a case of theft. It is, in this context, the petitioner filed the present petition invoking the aids of the provisions of Article 226 of the Constitution of India for direction so that he could appear in the final examination, inter alia, contending that without holding any inquiry or any material, merely upon suspicion, he became victim of great injustice and, therefore, action of the respondent No.1 in not forwarding the form and allowing him to appear in the final examination, is not only, unjust, illegal arbitrary but also violative of Article 14, 19 and 21 of the Constitution of India.

It may be mentioned that during the pendency of the petition, after hearing both the sides and considering the facts and circumstances emerging from the record, the petitioner was permitted and the respondents were directed to allow the petitioner to appear in the final examination of the Board and, accordingly, the petitioner appeared in the examination, of course, subject to the direction given that the results shall not be declared and it shall be preserved in a sealed envelop after assessment of the answer books. The answer books of the petitioner were examined and it was mentioned before the Court that as per the directions given by this Court, assessed answer books of the petitioner were kept in sealed envelop. Again the attention of the Court was drawn, on behalf of the petitioner, that the result was scheduled to be declared and, therefore, the whole petition with the consent of the learned advocates and also upon joint request was heard on merits and this Court in final order directed the respondents not to withhold the result and pronounce and publish it.

After having, dispassionately, examined the entire documentary evidence placed on record of this petition and also considering the rival submissions, it is

apparent that the petitioner became a victim of grave injustice for no fault of his own. Merely, because the Principal of the respondent No.1 School had suspicion that the petitioner was involved in the theft case, in respect of parts and components of computer for which FIR was also lodged on 1.11.99, the Principal did not pursue the process of final examination form when after the payment of fees of the final examination, the respondent No.2 Board sent the application form for final examination for verification before publication by the Board. At this stage, one thing may be noted, that it was, jointly, urged that in so far as the eligibility criteria of attendance was concerned, there was no any breach and there was sufficient presence despite the fact that in the later part of the second term, the petitioner was directed not to attend the School by the respondent No.1. Therefore, the question whether there was disability or disqualification on the ground of want of requisite presence of the petitioner in the relevant academic year was, rightly, not agitated. Therefore, obviously, it would take this Court to the consideration as to whether there was justification in not allowing the petitioner for final examination of the Board for no fault of the petitioner that there was no question of less attendance, that there was no question of non-payment of requisite fees along with filing of the final examination form. It is borne out from the record that when the final examination form was referred to respondent No.1, for verification before publication, in terms of the Higher Secondary Certificate Examinations Regulations, 1977 (Regulations of 1977) and directions and instructions issued by the competent authority in this behalf, the respondent No.1 did not process and pursue with the application form of the petitioner.

Regulations of 1977 provides 42 paras and two schedules in seven chapters. As per the relevant regulations and subsequent directions and instruction of the Board, final examination form of Board due to be held for XIIth standard in the month of March 2000 was referred to the respondent No.1 for verification as required under regulation and instruction, thereunder. The underlying purport and design of verification is to see that no error creeps in and no mistake occurs in the record of the Board. That is the reason why under relevant regulation and instruction, the application for final examination of class XII was sent to the Principal of respondent No.1 School, who, instead of following the relevant instructions and direction coupled with regulation of 1977 not only failed to verify the form, but made wrong endorsement in a fashion, as if there was

no candidate to appear in the final examination, in so far as the case of the petitioner shown at serial No.24 is concerned, as per the copy produced on record. It is found that the respondent No.1, Principal, out of suspicion and grudge of the involvement of the petitioner in the case of theft in respect of some parts and components of computer not only in the later part of the second term refused the petitioner to attend the classes regularly, but by making a wrong endorsement sent the form to the Board with an endorsement that at Sr.No.24 against the name of the petitioner "No candidate" and also an endorsement in Gujarati, which means in English "Form is withdrawn". The column in the copy of the school record of the consolidated sheet for XIIth examination showing the signature of the student and also the column showing the signature of the Principal is signed by respondent No.1 Principal on both the places in both the columns. The endorsement which is placed in the consolidated form sent for verification to the respondent No.1 by the respondent No.2 is diametrically opposite to the instructions and directions contained in circular dated 27.1.2000 pursuant to Regulations of 1977 in general and para 12 and 13 in particular and the same are not only unjust, unauthorised, but illegal resulting into grave injustice to the petitioner, whereby, he was deprived of appearance in the Board final examination though he had brilliant academic career all throughout and he had, successfully, attended the first semester with flying colours, in examination and, also, in the second term his performance was good and the attendance is also not disputed until in the later part of the second term, when he was not allowed to attend the School. It appears that the respondent No.1, entertaining a doubt or suspicion of the involvement of the petitioner, in a theft case, in respect of parts and components of computer of the respondent School, allowed the petitioner to become a victim of great injustice, depriving him of the appearance in the final examination of XII standard. Mere doubt, or even lodging of a complaint or even involvement without a decision of the competent Court or by a domestic Tribunal observing the principles of natural justice, could never constitute a disqualification resulting into prevention of a brilliant student like the petitioner from appearing in the examination. Nothing has been, successfully, pointed out that on mere lodging of FIR only, a student could be prevented from appearing examination and that too final examination of XII standard, which has a material bearing in the career of a student, as it is a turning point in the academic life, and that too by making wrong, unauthorised endorsement by a responsible person like

Principal of respondent No.1 School, which could hardly be defended. One of the fundamental aims and objects of writ jurisdiction under Article 226 of the Constitution, is to see that no person is allowed to suffer or become a victim of grave and great injustice. As and when, upon judicial review, if the Writ Court, which is empowered with the powers under Article 226 of the Constitution of India, finds that a party or a petitioner has become victim of malafides, arbitrariness, illegality or miscarriage of justice or a sufferer of a wrong decision like that, in breach of fundamental principles of natural justice, the Court cannot raise its hands in helplessness, particularly in such a situation and more so when the life of a brilliant student is at stake.

After having given anxious consideration to the peculiar facts and special circumstances emerging from the record of the present case, and considering the relevant instructions and directions issued under Regulations 1977 by the competent authority, the action of the respondent No.1 is noticed to be unjust, unreasonable, capricious, arbitrary and, also, tacitly, violating the standing instructions and directions contained in the circular read with Regulations 1977 of the Board. In the result, therefore, the petition is required to be allowed. Since at the end of the day when submissions were concluded and on the very next day, examination result was to be declared and upon joint request to pass the final order, reserving the reasons, as a special case, without making it a precedent, final order was recorded and that is how today, in support of the final order, reasons are recorded. Rule made absolute without costs.

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(vjn)